



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-1059]

RIN 1625-AA00

Safety Zones; Tappan Zee Bridge Demolition, Hudson River; South Nyack and Tarrytown, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones for navigable waters within approximately a 2,500 foot radius of the center of the old Tappan Zee Bridge east cantilever span. The two safety zones are needed to protect personnel, vessels, and the marine environment from potential hazards created by dropping the east cantilever span by explosive charges into the Hudson River. Entry of vessels or persons into either of these two safety zones is prohibited unless specifically authorized by the Captain of the Port New York or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through April 31, 2019. For the purposes of enforcement, actual notice will be used from January 12, 2019 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-1059 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Jeff Yunker, Waterways Management Division, U.S. Coast Guard Sector New York, telephone (718) 354-4195, email Jeff.M.Yunker@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port New York and New Jersey
DBO	USCG First District Bridge Office
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
NYSTA	New York State Thruway Authority
RNA	Regulated Navigation Area
§	Section
TFR	Temporary Final Rule
TIR	Temporary Interim Rule
U.S.C.	United States Code

II. Background Information and Regulatory History

On September 26, 2013, the Coast Guard published a TIR establishing a RNA on the navigable waters of the Hudson River, NY, for the Tappan Zee Bridge replacement project (78 FR 59231). We received no comments on the September 26, 2013 TIR. No public meeting was requested, and no public meeting was held. Construction on the Tappan Zee Bridge replacement project began on October 1, 2013.

On July 25, 2014, the Coast Guard published a change to the original TIR which established a new safety zone and expanded the RNA to create both an Eastern and Western RNA for the Tappan Zee Bridge replacement project on navigable waters of the Hudson River, NY (79

FR 43250). We received two comments on the July 25, 2014, TIR. The first comment referenced an unrelated rulemaking effort to establish anchorage locations along the Hudson River. The second comment merely provided the environmental checklist for the TIR. No public meeting was requested, and no public meeting was held.

On August 23, 2018 the NYSTA requested the RNAs and safety zone be extended until December 31, 2019, to complete all remaining contract operations in and over the Hudson River, including, but not limited to, steel erection, concrete bridge deck placements, installation of navigation lighting, and removal of the original Tappan Zee Bridge. On December 21, 2018, the Coast Guard published a change to the original TIR extending the RNAs and safety zone effective date to December 31, 2019 (83 FR 65521).

On November 9, 2018, the Coast Guard received the contractor's preliminary plan and procedures for explosives handling, and their east cantilever span salvage plan. The contractor has since deployed heavy lifting chains along the Hudson Riverbed beneath the east cantilever span, east of the Federal navigation channel. These heavy chains will be used to lift and remove the east cantilever span from the Hudson Riverbed after it has been felled from the existing bridge structure by explosive charges. The Hudson River will be closed to all vessels within approximately a 2,500 foot radius of the center of the east cantilever span, unless authorized by the COTP or his designated representative during these operations. These two safety zones will provide this 2,500 foot restricted area that is not currently within the boundaries of the existing eastern RNA codified at 33 CFR 165.T01-0174.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and

opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because the plans for using explosive charges to drop the east cantilever span into the Hudson River was only recently finalized and provided to the Coast Guard, which did not give the Coast Guard enough time to publish an NPRM, take public comments, and issue a final rule before demolition commences. Timely action is needed to respond to the potential safety hazards associated with this demolition project. It would be impracticable and contrary to the public interest to publish an NPRM because we must establish these two safety zones prior to demolition on January 12, 2019, to protect the safety of the waterway users, construction crew, and other personnel associated with the bridge project. A delay of the demolition to accommodate a full notice and comment period would delay necessary operations, result in increased costs, and delay the completion date of the bridge project and subsequent reopening of the Hudson River for normal operations. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the use of explosives to drop the east cantilever span of the old Tappan Zee Bridge to the Hudson Riverbed and subsequent removal of the east cantilever span from the Hudson River.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with the use of explosives to drop the east cantilever span of the old Tappan Zee Bridge to the Hudson Riverbed, tentatively scheduled no earlier than

Saturday, January 12, 2019, will be a safety concern for anyone within a 2,500-foot radius of the center of the east cantilever span of the old Tappan Zee Bridge. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the two safety zones during the dropping of the east cantilever span of the old Tappan Zee Bridge.

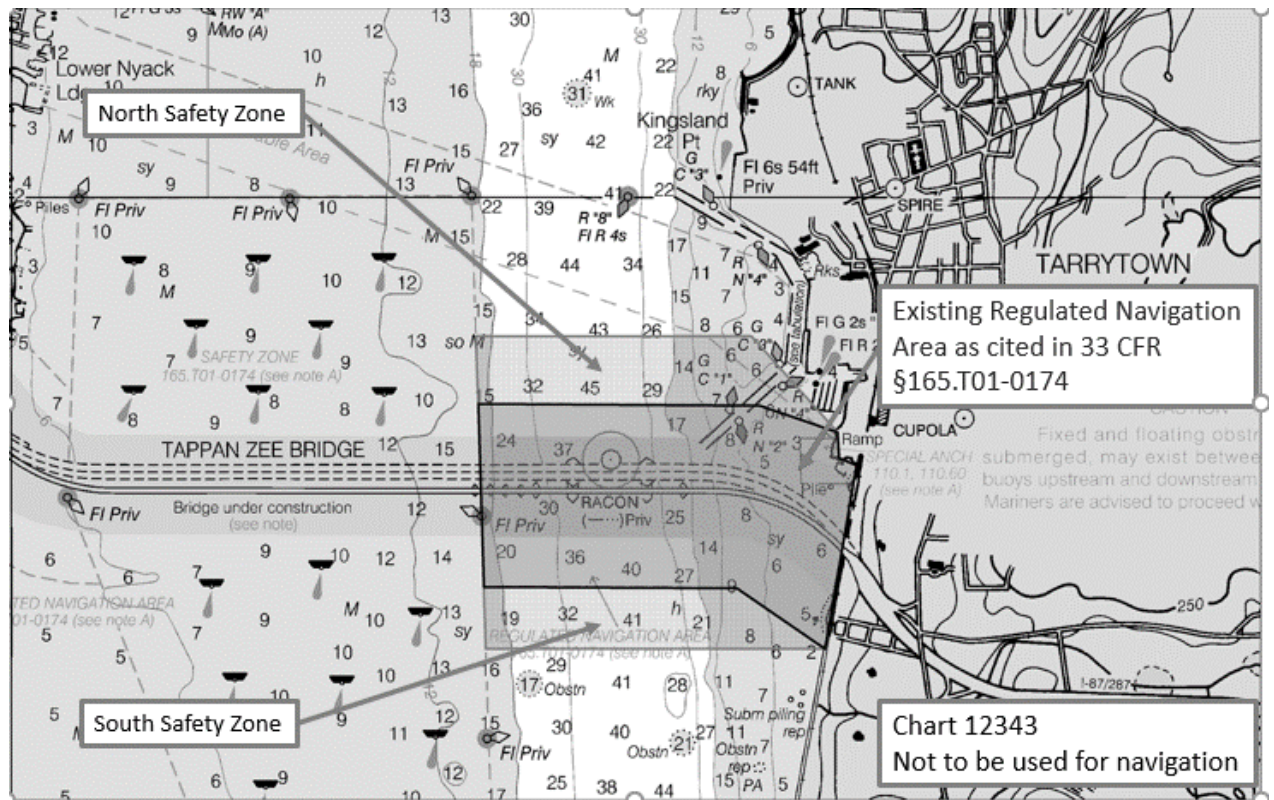
IV. Discussion of the Rule

This rule establishes two safety zones, a North Safety Zone and a South Safety Zone, from 7:00 a.m. on January 12, 2019 through 11:59 p.m. on April 31, 2019. This rule is tentatively scheduled to be enforced from 7:00 a.m. until 10:00 a.m. on January 12, 2019. The two safety zones cover all navigable waters of the Hudson River within approximately a 2,500 foot radius of the center of the old Tappan Zee Bridge east cantilever span in approximate position 41°04'12.3"N, 073°52'40.1"W (NAD 83). The two safety zones are immediately adjacent, north and south, of the existing eastern RNA, and immediately adjacent, east, of the existing safety zone, codified at 33 CFR 165.T01-0174.

The North Safety Zone includes all waters of the Hudson River north of the old Tappan Zee Bridge, and east of the existing construction safety zone, from surface to bottom, bound by the following approximate positions: 41°04'21.96"N, 073°52'03.25"W, thence to 41°04'26.27"N, 073°52'19.82"W, thence to 41°04'26.53"N, 073°53'20.07"W, thence to 41°04'37.50"N, 073°53'20.59"W, thence to 41°04'37.50"N, 073°52'21.65"W, thence to the point of origin (NAD 83).

The South Safety Zone includes all waters of the Hudson River south of the old Tappan Zee Bridge, and east of the existing construction safety zone, from surface to bottom, bound by the following approximate positions: 41°03'46.91"N, 073°52'05.89"W, thence to 41°03'56.69"N, 073°52'24.75"W, thence to 41°03'56.92"N, 073°53'18.84"W, thence to

41°03'46.92"N, 073°53'18.42"W, thence to the point of origin (NAD 83).



Additional illustrations showing the location of these safety zones are available in the docket.

The Coast Guard is publishing this rulemaking to be effective, and enforceable, through April 31, 2019 in case the project is delayed due to construction delays or unforeseen circumstances.

The duration of the two safety zones are intended to protect personnel, vessels, and the marine environment in these navigable waters during the use of explosives to drop the east cantilever span of the old Tappan Zee Bridge to the Hudson Riverbed. No vessel or person will

be permitted to enter the two safety zones without obtaining permission from the COTP or a designated representative.

The Coast Guard will notify the public and local mariners of these two safety zones through the Local Notice to Mariners and/or Broadcast Notice to Mariners via VHF-FM marine channel 16 in advance of any scheduled enforcement period.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the following reasons: (1) The two safety zones only impact a small designated area of the Hudson River, (2) the two safety zones will only be enforced during the demolition and cleanup of the east cantilever span of the old Tappan Zee Bridge to the Hudson Riverbed, (3) vessels not constrained by their draft or length may still transit from the north, to, and from, the marina located in Tarrytown, NY on the east shore of the Hudson River, (4) the demolition operations are scheduled in the Winter when recreational vessel

traffic is less frequent.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the two safety zones may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast

Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the

aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves two safety zones during demolition and cleanup operations that will prohibit entry within a 2,500 foot radius of the center of the old Tappan Zee Bridge east cantilever span during the use of explosives to drop the east cantilever span of the old Tappan Zee Bridge to the Hudson Riverbed. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-1059 to read as follows:

§165.T01-1059 Safety Zones, Tappan Zee Bridge Demolition, Hudson River; South Nyack and Tarrytown, NY.

(a) *North safety zone boundaries.* The following is a safety zone: all waters of the Hudson River north of the old Tappan Zee Bridge, and east of the existing construction safety zone, from surface to bottom, bound by the following approximate positions: 41°04'21.96"N, 073°52'03.25"W, thence to 41°04'26.27"N, 073°52'19.82"W, thence to 41°04'26.53"N, 073°53'20.07"W, thence to 41°04'37.50"N, 073°53'20.59"W, thence to 41°04'37.50"N, 073°52'21.65"W, thence to the point of origin (NAD 83).

(b) *South safety zone boundaries.* The following is a safety zone: all waters of the Hudson River south of the old Tappan Zee Bridge, and east of the existing construction safety zone, from surface to bottom, bound by the following approximate positions: 41°03'46.91"N, 073°52'05.89"W, thence to 41°03'56.69"N, 073°52'24.75"W, thence to 41°03'56.92"N, 073°53'18.84"W, thence to 41°03'46.92"N, 073°53'18.42"W, thence to the point of origin (NAD 83).

(c) *Definitions.* The following definitions apply to this section:

Designated representative means any Coast Guard commissioned, warrant, petty officer,

or designated Patrol Commander of the U.S. Coast Guard who has been designated by the Captain of the Port, Sector New York (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

Official patrol vessels means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(d) *Regulations.* When these two safety zones are enforced, the following regulations, along with those contained in § 165.23 apply:

(1) During periods of enforcement no person or vessel may enter or remain in either of the two safety zones described in paragraphs (a) and (b) of this section unless authorized by the COTP or the COTP's designated representative.

(2) Persons and vessels may request permission to enter the zone on VHF-16.

(3) Any vessels permitted to enter these zones must comply with all orders and directions from the COTP or the COTP's designated representative.

(4) Upon being hailed by a Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(5) Notwithstanding anything contained in this section, the Rules of the Road in 33 CFR subchapter E, part 84, are still in effect and must be strictly adhered to at all times.

(d) *Enforcement periods.* This regulation is enforceable 24 hours a day from 7:00 a.m. on January 12, 2019 until 11:59 p.m. on April 31, 2019, but will only be enforced during the use of explosives to drop the east cantilever span of the old Tappan Zee Bridge to the Hudson Riverbed. The demolition operations that will require enforcement of the two safety zone regulations are

tentatively scheduled to take place on January 12, 2019, from approximately 7:00 a.m. until 10:00 a.m., unless delayed. The COTP will provide notice of the channel closure by appropriate means to the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and/or Local Notice to Mariners.

(1) If enforcement is suspended, the COTP will provide a notice of the suspension of enforcement by appropriate means. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and/or Local Notice to Mariners.

(2) Violations of this regulation may be reported to the COTP at (718) 354-4353 or on VHF-Channel 16.

Dated: January 3, 2019.

J. P. Tama,
Captain, U.S. Coast Guard,
Captain of the Port New York.

[FR Doc. 2019-03716 Filed: 2/28/2019 8:45 am; Publication Date: 3/1/2019]